



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: PEYTON W. HALL ET AL.
Filed: MARCH 6, 2002
For: A CHEMICALLY AND BIOLOGICALLY RESISTANT HYDRATION
SYSTEM
Serial No.: 10/092,030
Group Art Unit: 3772
Examiner: PATEL, NIHIR B.
Atty. Dkt: TRIA:005

Pursuant to 37 C.F.R. 1.8, I certify that this correspondence is being deposited with the U.S. Postal Service in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date below:

1-10-11 Kate Farni
Date Name

Mail Stop AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-entitled application. No amendments are being filed with this request. This request is also being filed with a notice of appeal.

Claims 1, 2, 4, 5, 7, 16, 17, 19, 20, 22, 23, and 25-278 were rejected under §103 based on Field (US 4,636,412) in view of Ohodaira et al. (US 4,482,585) and further in view of Lescaut (US 4,753,368). Claims 6 and 21 were rejected as obvious based further in view of Kong (US 6,253,936).

1. Lescaut does not disclose thermoplastic polyurethane

The rejections hinge upon the examiner's statement that Lescaut discloses thermoplastic polyurethane as a potential inner layer of the metalloplastic composite container shown therein. However, Lescaut simply does not disclose thermoplastic polyurethane.

In this regard, the passage cited by the examiner unequivocally states:

A layer of anti-corrosion covering 15 and 16 based on *thermoplastic* resins selected from polyamides, fluorinated resins, polyethylenes or PVC,

or

thermosetting resins such as epoxy resins or *polyurethanes*, is applied to the interior of shells 11 and 12.

(Lescaut, column 2, line 68 through column 3, line 3.)

As can be seen, Lescaut discloses *thermosetting* polyurethane but does not disclose *thermoplastic* polyurethane. As is known, thermosetting materials are completely different from thermoplastic materials.

Lescaut discloses polyamides, fluorinated resins, polyethylenes and PVC as possible thermoplastic resins. Polyurethane is not in this select list. Lescaut only refers to thermosetting polyurethane.

Because Lescaut does not disclose thermoplastic polyurethane, the rejections should be withdrawn.

2. The combination of references is improper; assuming the combination is proper the combination does not render the claims obvious

A Field with Lescaut

Field discloses a flexible enema bag. The outer layer is Nylon. The inner layer is linear low density polyethylene (LLDPE). The primary need for this bag is that it be "water impermeable" and "flexible." (Col. 3, lines 43-46.)

The examiner expressly states that Field neither discloses a reinforced fluorinated rubber composite outer layer nor a thermoplastic polyurethane inner layer. The examiner turns to two separate and distinct references for such teaching, Lescaut and Ohodaira.

In direct contrast, Lescaut shows a "metalloplastic composite container." This is not a flexible bag. It is not flexible. It is not used for enemas, as in Field. The outer layers are

metallic. (Col. 1, lines 37-55.) The interior of the container can be made of a variety of materials. There is therefore no reason to combine these Lescaut with Field.

Furthermore, the examiner provides no reasoning whatsoever as to why the combination should be made. The rejection merely states a conclusion. For this additional reason the rejection is improper.

Moreover, as explained above, Lescaut does not disclose thermoplastic polyurethane. See column 3, lines 1-3. Accordingly even if the combination is proper, the combination does not render the claims obvious.

B. Field with Ohodaira

Field discloses a flexible enema bag. The outer layer is Nylon. The inner layer is linear low density polyethylene (LLDPE). The primary need for this bag is that it be "water impermeable" and "flexible." (Col. 3, lines 43-46.)

In direct contrast, the Ohodaira bag is for a container resistant to extremely low temperatures. The inner layer is polyethylene having specified molecular weights and properties. The outer layer is PET (see abstract) or other like material (see col. 3, lines 40-50 where fluorinated rubber is mentioned). The mere fact that Ohodaira discloses an outer layer of fluorinated rubber does not mean that it should be used in Field.

There is likewise simply no need for materials resistant to extremely low temperatures in the enema bag of Field. There is therefore no motivation or suggestion to combine these references. The examiner has not made out a prima facie case of obviousness as to the alleged combination of Field and Ohodaira.

What is more, the examiner provides no reasoning whatsoever as to why the combination should be made. The rejection merely states a conclusion.

Unlike the claims, Ohodaira does not disclose a fluorinated rubber *composite* including at least one reinforcement layer. Therefore even if the combination is proper, the combination does not render the claims obvious.

C. Conclusion regarding combination and obviousness if combination is proper

It can be seen that Field, Lescaut, and Ohodaira are not combinable. The examiner thus has not made out a prima facie case of obviousness. If for argument's sake the references are considered to be combinable, they do not, either alone or in combination, render the pending claims obvious because they do not add up to the claimed invention.

Finally, Kong does not fill the deficiencies of the other references. The rejections based on Kong as a fourth reference should therefore be withdrawn for the reasons above.

Thus, it is respectfully submitted that in view of the comments above, all grounds of rejection should be withdrawn.

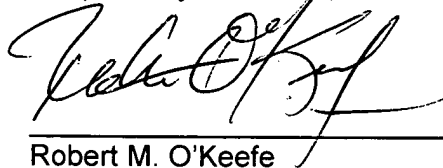
CONCLUSION

The final office action dated July 8, 2010 is the eighth office action in this. The office has changed its position multiple times during these proceedings. This application was filed over eight years ago. Applicant respectfully urges that this case be passed to allowance expeditiously.

In view of the foregoing, it is submitted that the claims are in condition for allowance. Accordingly, favorable reconsideration and Notice of Allowance are courteously solicited. If the claims are allowed, applicant respectfully requests that any appropriate claims that are currently withdrawn be rejoined into the application.

Should any fees under 37 CRF 1.16-1.21 be required for any reason relating to the enclosed materials, the Commissioner is authorized to deduct such fees from Deposit Account No. 10-1205/TRIA:005. The examiner is invited to contact the undersigned at the phone number indicated below with any questions or comments, or to otherwise facilitate expeditious and compact prosecution of the application.

Respectfully submitted,



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